

**MURRAY L. GREENFIELD & ASSOCIATES**

BY: Murray L. Greenfield, Esquire

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ATTORNEY FOR: **PLAINTIFF**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELYSE UNRATH

v.

STEAK AND ALE OF  
PENNSYLVANIA, INC d/b/a  
BENNIGAN'S GRILL AND  
TAVERN

CIVIL ACTION NO. 02-CV-3191

**PLAINTIFF'S ELYSE UNRATH RESPONSE TO DEFENDANT'S STEAK AND  
ALE OF PENNSYLVANIA, INC. MOTION IN LIMINE TO PRECLUDE LAY  
OPINION TESTIMONY**

Plaintiff, Elyse Unrath, by and through her attorneys, Murray L. Greenfield &  
Associates having received Defendant's Motion in Limine hereby responds and avers as  
follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Denied. It is denied that there is specialized knowledge required to testify as

to the general condition of a flooring surface. In this particular case, Patrick Unrath

personally inspected the area where Ms. Unrath fell and felt that it was slippery. It is anticipated that Mr. Unrath will be called to testify in this matter and will provide testimony consistent with his observations at the scene. Under Federal Rule of Evidence 701, Mr. Unrath's opinion on the slipperiness of the floor is rationally based on his perception at the time when he examined the area where Ms. Unrath fell and therefore his testimony should be presented to the jury as it would be helpful for a determination of a fact that is an issue in this case.

WHEREFORE, Plaintiff, Elyse Unrath respectfully requests that this Honorable Court deny Defendant's Motion in Limine excluding any lay witness testimony regarding the condition of the flooring surface at Bennigan's and enter an Order in the form proposed herein.

Respectfully submitted,

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MURRAY L. GREENFIELD, ESQUIRE  
MICHAEL F. McCarty, ESQUIRE  
Attorney for Plaintiff

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3191

**PLAINTIFF'S, ELYSE UNRATH MEMORANDUM OF LAW IN RESPONSE TO  
DEFENDANT'S STEAK AND ALE OF PENNSYLVANIA, INC. MOTION IN  
LIMINE TO EXCLUDE CERTAIN LAY OPINION TESTIMONY**

**I. INTRODUCTION**

Plaintiff, Elyse Unrath, may introduce testimony that the ceramic floor surface where Plaintiff fell was slippery and also wet. Plaintiff, Elyse Unrath and Debra Rubinsky have both testified that their clothes were wet as a result of a floor on the floor in front of the wait station. When Plaintiff's son, Patrick Unrath arrived at the scene he inspected the area where Plaintiff fell and determined that the area felt slippery. A waitress at the restaurant testified that many people had complained about the slipperiness of the floor. This testimony is relevant and may go to Defendant's knowledge in regard to notice.

II. ARGUMENT

Federal Rule of Evidence 701 provides for opinion testimony by lay witnesses. The slipperiness of the floor will clearly be an issue in this case. Testimony regarding the area where Plaintiff fell as being slippery will be based on the perception of the witnesses in this case and helpful to a clear understanding of the witnesses' testimony and the determination of a fact in issue. Plaintiff does not intend to offer testimony that the ceramic tile flooring at the Bennigan's was a dangerous condition in and of itself.

WHEREFORE, Plaintiff, Elyse Unrath requests that Defendant's Motion in Limine to Preclude Lay Witness Testimony be denied.

Respectfully submitted,

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MURRAY L. GREENFIELD, ESQUIRE  
MICHAEL F. McCarty, ESQUIRE  
Attorney for Plaintiff

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**ORDER**

AND NOW, this            day of            , 2003, having received  
Defendant's Motion in Limine to preclude lay opinion testimony and Plaintiff's Response  
thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

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J.

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CIVIL ACTION NO. 02-CV-3191

PENNSYLVANIA, INC d/b/a

BENNIGAN'S GRILL AND

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**CERTIFICATION OF SERVICE**

I hereby certify that I have served a copy of this paper upon all other parties or their  
attorney of record by:

- ☒ Regular First Class Mail
- ☐ Certified Mail
- ☐ Other \_\_\_\_\_

\_\_\_\_\_  
MURRAY L. GREENFIELD, ESQUIRE  
MICHAEL F. McCARTIN, ESQUIRE  
Attorney for Plaintiff

Date: \_\_\_\_\_

**VERIFICATION**

I, MURRAY L. GREENFIELD, ESQUIRE, verifies that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 PA.C.S. §4904 relating to unsworn falsification to authorities.

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**MURRAY L. GREENFIELD, ESQUIRE**  
**Attorney for Plaintiff**

**Date:**\_\_\_\_\_